IBC – LIMITATION FOR DEBT APPLICATION

Recently, the Hon'ble Supreme Court while deciding ***Dena Bank (Now Bank of Baroda) v. C. Shivkumar Reddy***[1], an appeal against the judgment of National Company Law Tribunal (NCLAT), wherein the NCLAT rejected the corporate insolvency application on the ground of limitation, settled important issues pertaining to Section 14 and 18 of the Limitation Act, 1963 and time barred debt vis-à-vis Insolvency and Bankruptcy Code.

In the instant appeal, the appellant extended a loan facility to the corporate debtor and within the period of limitation extended a one-time settlement offer. On default, the bank filed a recovery suit and obtained a recovery certificate accordingly. Thereafter, on failure to realise the loan repayment, the bank preferred an application under the provisions of the Insolvency and Bankruptcy Code, 2016 (**IBC**).

The Supreme Court held that in the limitation period is applicable in the case of the application under IBC, which is 3 year from the date of accrual of the default as per Section 238A of IBC read with Article 137 of Limitation Act. However, acknowledgment of debt in terms of Section 18 of the Limitation Act shall trigger the fresh period of limitation, which in the instant appeal was the One-time Settlement, even though the intention of payment was not captured by the document and delay in filing is condonable in terms of Section 5 of the Limitation Act, 1963.

Additionally, the Hon'ble Supreme Court held that the issuance of a certificate of Recovery in favour of the bank/financial creditor would give rise to a fresh cause of action, under Section 7 of IBC, within 3 years from the date of issuance of such recovery certificate.

[1] 2021 SCC OnLine SC 543

INCOME TAX – DEDUCTION PERMISSIBLE ON ISSUANCE OF DEBENTURES AGAINST LOAN

The Hon'ble Supreme Court in ***M.M. Aqua Technologies Ltd. v. Commissioner of Income Tax, Delhi-III***[2], decided on the question relating to Section 43B Explanation 3C of the Income Tax Act, 1961, wherein the assessee/petitioner company issued debentures in lieu of interest accrued and payable to financial institution.

The learned CIT and learned ITAT permitted the deduction on ground that the issuance of debentures discharges the liability of the assessee to pay the accrued interest to such financial institution, inspite the issuance of debenture is not an actual payment for the provision of Section 43B of the IT Act. The decision of the learned CIT was upheld by the ITAT. However, aggrieved from the order, the Revenue preferred an appeal before the Hon'ble High Court, Hon'ble High Court reversed the order of learned Tribunal.

The aggrieved assessee preferred an appeal before the Hon'ble Supreme Court, wherein the Hon'ble Court set-aside the order of the Hon'ble High Court and upheld the order of the learned Tribunal and permitted the assessee to avail deduction in terms of Section 43B Explanation 3C of the Income Tax Act, 1961 for issuance of debentures for settlement of accrued interest vis-à-vis the loan facility.

[2] 2021 SCC OnLine SC 575

SERVICE TAX – UNREASONABLE EXTENSION OF LIMITATION WILL BENEFIT ASSESSEE

In an appeal by the assessee providing loan facility and other services under the category of 'Banking and other Financial Services', against the notice issued by the Department for taking cenvat credit wrongly. The Department allege that the cenvat credit was not available for the services, as per Rule 6(1) read with Rule 6(5) and 6(3) of the Cenvat Credit Rules. Aggrieved from the order of the learned Commission (Appeals), the assessee preferred an appeal before the learned CESTAT, Principal Bench, New Delhi, titled as ***State Bank of Patiala v. Commissioner, Central Excise and Central Goods and Service Tax***[3].

The contentions raised by the assessee that the providing loan is not a service, rather an activity in which money in real terms which is akin to goods, is provided to the borrower and the interest earned by the assessee is not taxable as it is an exempted service.

In light of the facts and circumstances, the learned CESTAT, affirm the contentions of the appellant's counsel and also held that the extension of limitation period for issuance of notice is bad, as approximately 32 months of time has been lapsed since the last date when the return was due from the financial year ending 31.03.2010. Thereby, the learned CESTAT, allowed the appeal and set-aside the impugned order.

[3] Service Tax Appeal No. 52160/2019-SM

GST – PENDENCY OF PROCEEDING MANDATORY FOR PROVISIONAL ATTACHMENT

The newly promulgated regime of goods and services tax under the 101th Constitutional Amendment Act, 2017, wherein the idea was to uniform the indirect tax regime under "One Nation One Tax One Market" slogan. The power of provisional attachment was bestowed upon the authorities constituted therein to protect the revenue interest of the government. However, the stringent procedure needs to be adhered while attachment of the property of an assessee, one among others is the pendency of the proceedings under the Act.

In the instant case, property of an assessee was attached by the provisional attachment order by the Authorities, even though no proceedings were pending against the assessee either under Sections 62 or Section 63 or Section 64 or Section 67 or Section 73 or Section 74. Aggrieved from the orders of the Authorities, assessee preferred the matter before the jurisdictional Hon'ble High Court of Gujarat, titled as ***M/s Mahavir Enterprise v. State of Gujarat***[4].

The Hon'ble Court observed that the attachment is arbitrary and dehors of the said provision as no proceedings were pending under the legislation and on account of the observation, the Hon'ble Court enquired the circumstances on which the attachment order was passed and also magnanimously granted the relief by directing the Authorities to lift the attachment of the property.

[4] R/Special Civil Application No. 9586 of 2020.

GST – PROVISIONAL MIGRATION OF REGISTRATION

The enactment of the new GST regime has initially drawn glitches on migrating to the new system of indirect tax payment faced by assessee. In the instant case, also an assessee duly registered under the Kerala Value Added Tax was required to migrate to the GST regime and obtain a new registration therein. However, due to the technical issues, the registration was not take place and aggrieved from this, assessee preferred a writ petition before the Hon'ble Kerala High Court, wherein the Hon'ble Court disposed off the petition by allowing re-registering under the new GST. Thereafter, on account of failure to comply with the statutory tax liability for the gap period between the migration, the Department issued notices for non-compliance of the statutory provisions.

The assessee aggrieved from the actions of the Department preferred another petition before the Hon'ble Kerala High Court, titled as, ***St. Joseph Tea Company Ltd. v. The State Tax Officer & Ors.***[5], understanding the issue at hand and technical difficulty for the Department to make changes in the GST portal for providing opportunity for an individual assessee to comply with the statutory requirement from a date prior to its registration held that a provisional registration to be provided to the assessee for the migration period and the petitioner shall pay the requisite tax liability along with applicable interest. Also, the department shall not deny input tax credit for the period, however, the department is at liberty to verify the genuineness of the tax remitted and credit take.

[5] WP (C) No. 17235 of 2020.

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[6] Majesty legal is law firm, established in 2013 and aim of the present article is to provide recent legal development. The opinions presented in the article are personal in nature and not to be deemed as legal advice.